

Federal Court



Cour fédérale

Date: 20171109

Docket: IMM-2218-17

Citation: 2017 FC 1031

Vancouver, British Columbia, November 9, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

SIMRANJIT KAUR

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The Applicant has applied for judicial review of a decision [the Decision] of an immigration officer [the Officer] dated May 3, 2017 in which she refused the Applicant's application for restoration of temporary resident status [the Restoration Application]. This application is brought pursuant to subsection 72(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [the IRPA].

I. BACKGROUND

[2] The Applicant is a 27-year-old female citizen of India. In April 2014, she entered Canada on a student visa and in April 2015, she obtained a diploma from George Brown College. The Applicant subsequently received a Post-Graduate Work Permit [PGWP], valid for one year from December 10, 2015 until December 9, 2016. On December 7, 2016, the Applicant applied for an open work permit. That application was refused because it was incomplete. The required fees were not paid and the offer of employment ID number was not provided.

[3] On January 23, 2017, using the services of an immigration consultant [the Consultant], the Applicant submitted the Restoration Application under section 182 of the *Immigration and Refugee Protection Regulations* [the IRPR], which provides that a visitor, worker or student may file an application for restoration of temporary resident status following a loss of status. The Restoration Application was submitted online.

II. THE DECISION

[4] In the Decision, the Officer lists the factors that were taken into consideration. They included:

- Reason for original entry and reason for requested extension;
- Ties to country of permanent residence, including:
 - Employment and study commitments;
 - Family ties and responsibilities;
 - Status (citizenship or immigration status);
- Financial means for the extended stay and return home;
- Travel and identity documents; and
- Probability to leave Canada at the end of authorized stay.

[5] The Officer's Global Case Management System [GCMS] notes, which form part of the Decision, conclude that the Applicant will not leave Canada at the end of her stay. They state:

Client is requesting restoration and a Visitor Record, client has exhausted maximum duration of her PGWP and later applied for an open work permit without being eligible under any particular program, nor having a valid LMIA, which the client may have known. Client is now requesting a 6 month Visitor Record for tourism, although client has resided in Canada for three years already. I am satisfied that client has had had [sic] the opportunity to achieve the goals of her visit to Canada. It no longer appears as though client meets the definition a [sic] genuine temporary resident, who will leave Canada at the end of her authorized stay. Application is therefore denied, refusal letter sent this day and client advised to depart Canada immediately.

III. THE ISSUES AND THE STANDARDS OF REVIEW

(i) The Applicant says that the Decision is flawed because the Officer did not take all her documents into consideration. This alleged breach of procedural fairness will be reviewed on a correctness standard.

(ii) The Applicant also says that the Decision is flawed based on the documents that the Officer did consider. The Decision will be reviewed on a reasonableness standard on this issue.

IV. DISCUSSION AND CONCLUSIONS

A. *Issue (i)*

[6] The Decision was based on the documents listed below, which were before the Officer. The Certified Tribunal Record [CTR] shows that they were described as "incoming documents" in the GMCS notes. I will refer to them collectively as the "CTR Documents":

a) Applicant's passport photos (labelled "Incoming: 5");

- b) Application (labelled “Incoming: 6”);
- c) Client information, comprising a copy of the Applicant’s work permit refusal letter, dated January 11, 2017, and a copy of the Applicant’s work permit, issued December 10, 2015 (labelled “Incoming: 7”);
- d) Passport/travel document (labelled “Incoming: 8”);
- e) Proof of funds (labelled “Incoming: 9”);
- f) Use of a Representative form (labelled “Incoming: 10”);
- g) Representative submission letter (labelled “Incoming: 11”).
[I will refer to this Document which is dated January 23, 2017 as the “Consultant’s Letter”].

[7] The Applicant’s affidavit sworn on July 6, 2012 does not show that she personally made or supervised the submission of the online Restoration Application. She simply states that she made the Restoration Application and that it was submitted online. The only reasonable conclusion based on the Consultant’s Letter is that he or someone in his office undertook the online submission.

[8] The Applicant deposes that the documents listed below were included in her Restoration Application. They will be referred to as the “Non CTR Documents”:

- a) Letter from Simranjit Kaur to Citizenship and Immigration Canada dated January 23, 2017;
- b) E-mail from <simrandayal02@gmail.com> to <kulvinderbal@gmail.com> dated December 2, 2016;
- c) Printout from the B.C. PNP Online System;
- d) Star-Mart Enterprises Ltd. paystubs; and
- e) Schedule 1: Application for Temporary Residence.

[9] The difficulty is that, even if the Non-CTR Documents were included in the Applicant's Restoration Application in hard copy, they did not form part of the material submitted online, and recorded by the GCMS notes as incoming documents on January 23, 2017. In addition, they do not appear in the CTR, and are not referred to on a page entitled "Document submitted by the Client" found on the Immigration, Refugees and Citizenship Canada website dealing with the Applicant's Restoration Application. Lastly, they are not listed on the Consultant's Letter which the Consultant sent with the online version of the Restoration Application.

[10] It is noteworthy that there is no evidence from the Consultant showing that the Non CTR Documents were included in the online submission of the Restoration Application. In these circumstances, I accept the evidence described above which shows that the Non CTR Documents were not included with the online Restoration Application and were not before the Officer. Accordingly, there was no breach of procedural fairness. Unfortunately, this means that the Officer was not aware that the Applicant had registered with the British Columbia Provincial Nominee Programme [BC-PNP] and was not aware that the Applicant had written a letter of explanation about her travel plans and her ties to India.

B. *Issue (ii)*

[11] The Applicant also says that the Decision based only on the CTR Documents is unreasonable because the CTR Documents show a history of extensive travel. However, in my view, the Officer's Decision was reasonable. The Applicant had only \$5,376 in her chequing account. She provided no information about her expenses including the cost of her ticket home and did not indicate that she had other sources of income. Further, she provided no information

about family relationships or other ties to India and did not indicate what parts of Canada she wanted to visit as a tourist.

[12] Further, in my view, when the Officer concluded that the Applicant had had the opportunity to achieve the goals of her visit to Canada, she was referring to study and work experience. The Applicant says that it was unreasonable of the Officer to conclude that her goals had been met because the Restoration Application made it clear that tourism was also a goal. However, given that the Officer was not provided with any information about the Applicant's plan to tour in Canada, I think it was reasonable not to consider tourism in reaching the Decision.

[13] Accordingly, based on the CTR Documents which were before the Officer, I have concluded that the Decision was reasonable.

V. CERTIFICATION

[14] No question was posed for certification for appeal.

ORDER

UPON the Applicant's application for judicial review of a decision dated May 3, 2017, which denied her application to restore her immigration status;

AND UPON reading the material filed and hearing the submissions of counsel for both parties in Vancouver on November 9, 2017;

THIS COURT ORDERS that the application for judicial review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2218-17

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AND IMMIGRATION

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